

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NATHANIEL P. LANGFORD and DANIEL H. BISHOP

Appeal No. 94-2864
Application No. 07/911,729¹

ON BRIEF

Before RONALD SMITH, WEIFFENBACH and PAK, Administrative Patent Judges.

PAK, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the examiner's refusal to allow claims 17 through 20. Claim 20 was amended subsequent to final rejection. Claims 21 through 31 stand withdrawn from consideration as being drawn to a non-elected invention.

Claim 17 is representative of the subject matter on appeal and reads as follows:

¹ Application for patent filed July 10, 1992. According to the appellants, the application is a division of Application 07/482,258, filed February 20, 1990, now U.S. Patent No. 5,146,646.

Appeal No. 94-2864
Application No. 07/911,729

17. Method of making a paint applicator that can be mounted on a paint roller, said method comprising the sequential steps of:

- a) continuously forming a cylindrical core of paint-impervious material,
- b) spirally winding onto, and bonding to, the core an elongated strip of a resilient, reticulated reservoir,
- c) forming on the exterior surface of the reservoir a flexible reticulated metering layer which has at least twice as many openings/cm as does the reservoir and a thickness less than one-half that of the reservoir,
- d) bonding the metering layer to the underlying reservoir only at crossing points of the reticulations, and
- e) cutting the resulting composite to individual roller lengths.

The references of record relied on by the examiner are:

| | | |
|------------------------|-----------|---------------|
| Mallindine | 3,588,264 | Jun. 28, 1971 |
| Scholl et al. (Scholl) | 3,655,477 | Apr. 11, 1972 |
| Grewe | 3,671,373 | Aug. 11, 1970 |

Published British Patent Application having a publication number of 1 214 170, "Adhesive Lamination of Flexible Webs," Leo Marcel Germain, Dec. 2, 1970 (hereinafter referred to as "Germain"). Applicant's admission at pages 1 and 2 of the specification (hereinafter referred to as "admitted prior art").

Claims 17 and 18 stand rejected under 35 U.S.C. § 103 as unpatentable over the admitted prior art in view of Grewe and Germain. Claims 19 and 20 stand rejected under 35 U.S.C. § 103 as unpatentable over the admitted prior art in view of Grewe and Germain as applied to claim 17 and 18 above, further in view

Appeal No. 94-2864
Application No. 07/911,729

of Mallindine. Claim 20 stands rejected under 35 U.S.C. § 103 as unpatentable over the admitted prior art in view of Grewe, Germain and Mallindine as applied to claims 17-19 above, further in view of Scholl.

We have carefully reviewed the entire record, including all of the arguments advanced by appellant and the examiner in support of their respective positions. This review leads us to conclude that the examiner's § 103 rejections are not well-founded for essentially those reasons expressed at page 5 of the Brief and pages 2 through 4 of the Reply Brief. Accordingly, we reverse each of the foregoing rejections. We only add that the examiner must be mindful of his burden of supplying evidence for establishing obviousness. See In re Warner, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968). However, as indicated by appellant at page 5 of the Brief and pages 2 through 4 of the Reply Brief, the examiner has not met his burden of establishing obviousness for the limitation "**forming**"² on the exterior surface of the reservoir a flexible

² At pages 5 and 6 of the specification, appellant distinguishes forming a flexible reticulated metering layer from providing a flexible reticulated metering layer.

Appeal No. 94-2864
Application No. 07/911,729

reticulated³ metering layer which has at least twice as many openings/cm as does the reservoir and a thickness less than one-half that of the reservoir, [and] "**bonding** [thereof] to the underlying reservoir only at **crossing points of the reticulations** . . ." in claim 17 (emphasis supplied). The decision of the examiner rejecting claims 17-20 is reversed.

REVERSED

| | | |
|-----------------------------|---|-----------------|
| RONALD H. SMITH |) | |
| Administrative Patent Judge |) | |
| |) | |
| |) | |
| |) | |
| |) | BOARD OF PATENT |
| CAMERON WEIFFENBACH |) | APPEALS |
| Administrative Patent Judge |) | AND |
| |) | INTERFERENCES |
| |) | |
| |) | |
| |) | |
| CHUNG K. PAK |) | |
| Administrative Patent Judge |) | |

³ Reticulated means resembling a "network". See page 2 of the Reply Brief and page 504 of Grant & Hackh's Chemical Dictionary, Fifth Edition, MCGRAW-HILL BOOK COMPANY, Grant et al., 1987.

Appeal No. 94-2864
Application No. 07/911,729

WILLIAM L. HUEBSCH
3M OFFICE OF INTELLECTUAL PROP. COUNSEL
P.O. BOX 33427
ST. PAUL, MN 55133-3427

CKP/jrg

APPEAL NO. 94-2864 - JUDGE PAK
APPLICATION NO. 07/911,729

APJ PAK

APJ R. SMITH

APJ WEIFFENBACH

DECISION: **REVERSED**

Typed By: Jenine Gillis

DRAFT TYPED: 19 Feb 99

FINAL TYPED: